

REMARKS

In response to the Office Action mailed November 28, 2007, Applicants respectfully request reconsideration of the Application in view of the foregoing Amendments and the following Remarks. The claims as now presented are believed to be in allowable condition.

Claims 4, 6, 10-11, 15, 17, and 21-22 have been canceled. Claims 1-3, 5, 7-9, 12-14, 16, and 18-20 remain in this application, of which claims 1 and 12 are independent claims.

Rejection of Claims 1, 3, 5, 8, 12, 14, 16, and 19 under 35 U.S.C. §102(b)

Claims 1, 3, 5, 8, 12, 14, 16, and 19 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,625,755 to Hirata et al. (hereafter referred to as "Hirata"). Applicants respectfully traverse this rejection.

Claims 1 and 12 recite determining whether the data is a predetermined type of data, terminating retrying of reading or writing of the data if the required time period is greater than a remaining retrying limitation time only when the data is of the predetermined type of data, and terminating retrying of reading or writing of data if the total count of retries is greater than the predetermined maximum number of retries only when the data is not the predetermined type of data.

The Examiner cites col. 9, lines 1-8 of Hirata as teaching such limitations. However, col. 9, lines 1-8 of Hirata only states the effect of the flowcharts of FIGS. 5 and 6 of Hirata:

Further, there can be obtained the effect that the reading and writing command can be completed *within the prescribed time* required for the data such as the image data and the audio data of which the processing in real time is important and the retrying operation can be performed *as much as possible* to make reading and writing without deterioration of the reliability for the data such as the management data of which the reliability is important. (Emphasis added.)

Such above text of Hirata only states the effects of the flowcharts of FIGS. 5 and 6 of Hirata.

For example, FIG. 5 of Hirata shows terminating retrying of reading of data if the total count of retries is greater than the maximum allowed number of retries *for both cases* of when the data is A/V data and management data, but with the respective maximum allowed number for the A/V data being less than the respective maximum allowed number for the management data as stated at col. 6, lines 42-56 of Hirata:

....(in this case, *N for the storage area A (i.e., for the management data) > N for the storage area B (i.e., for the A/V data)*, so that retrying operation for reading of data such as the management data in the storage area A can be repeated by sufficient number of times to enhance reliability of read data and retrying operation for reading of data such as image data in the storage area B can be repeated by smaller number of times to ensure the real-time property for reading.... (Emphasis added.)

Even for such FIG. 5 of Hirata, the *effect* is that the reading command can be completed within the prescribed time for the image data (with a respective N for the image data being lower) and that the retrying operation can be performed as much as possible for management data (with a respective N for the management data being higher), as stated at col. 9, lines 1-8 of Hirata.

Similarly, FIG. 6 of Hirata shows terminating retrying of reading of the data if the required time period is greater than a remaining retrying limitation time *for both cases* of when the data is A/V data and management data, but with the respective retrying limitation time for the A/V data being less than the respective retrying limitation time for the management data as stated at col. 7, lines 51-57 of Hirata:

....(in this case, *T for the storage area A (i.e., for the management data) > T for the storage area B (i.e., for the A/V data)*), so that retrying operation for reading data in the storage area A can be repeated a sufficiently long time to enhance the reliability of

read data and retrying operation for reading of data in the storage area B can be repeated in a shorter time to give preference to the real-time property.... (Emphasis added.)

Even for such FIG. 6 of Hirata, the effect is that the reading command can be completed within the prescribed time for the image data (with a respective T for the image data being lower) and that the retrying operation can be performed as much as possible for management data (with a respective T for the management data being higher), as stated at col. 9, lines 1-8 of Hirata.

In addition, please note that in FIGS. 5 and 6 of Hirata, the type of data is not even determined until step 117 in FIG. 5 or step 218 in FIG. 6 after the retrying has completely failed by expiring the maximum number of retry count N or the maximum allowed retry time T, for either the A/V data or the management data. Thus in Hirata, the type of data (i.e., A/V data or management data) does not determine the use of a respective one of the count N or the time limitation T.

In summary, FIG. 5 of Hirata clearly teaches terminating retrying of reading data if the total count of retries is greater than the maximum allowed number N for **both A/V data and management data**, and FIG. 6 of Hirata clearly teaches terminating retrying of reading data if the required retry time period is greater than a remaining retrying limitation time T for **both A/V data and management data**. And, col. 9, lines 1-8 of Hirata only states the effect of the flowcharts of FIGS. 5 and 6 of Hirata.

Thus, Hirata completely fails to teach the limitations of terminating retrying of reading or writing of the data using a respective one of the count N or the time limitation T depending on the data type (i.e., A/V data or management data) which is not even determined in Hirata until after the retry operation completely fails.

Anticipation of a claimed invention requires the presence in a single prior art document of *each and every* element of the properly construed claim. The Federal Circuit has set out the following requirements for anticipation pursuant to 35 U.S.C. §102:

...that a patent claim is anticipated under 35 U.S.C. §102 "must demonstrate, among other things, identity of invention." ...[O]ne who seeks such a finding must show that each element of the claim in issue is found, either expressly or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice.

Minnesota Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1565 (Fed. Cir. 1992).

Because Hirata does not disclose, teach, or suggest all of the limitations of claims 1 and 12, the rejection of claims 1 and 12 under 35 U.S.C. §102(b) in view of Hirata should be withdrawn.

Claims 3, 5, and 8 which depend from and further limit claim 1, are allowable for at least the same reasons that claim 1 is allowable as stated above.

Claims 14, 16, and 19 which depend from and further limit claim 12, are allowable for at least the same reasons that claim 12 is allowable as stated above.

Rejection of Claims 2, 7, 9, 13, 18, and 20 under 35 U.S.C. §103(a)

Claims 2, 7, and 9 which depend from and further limit claim 1, are allowable for at least the same reasons that claim 1 is allowable as stated above.

Claims 13, 18, and 20 which depend from and further limit claim 12, are allowable for at least the same reasons that claim 12 is allowable as stated above.

Conclusions

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested.

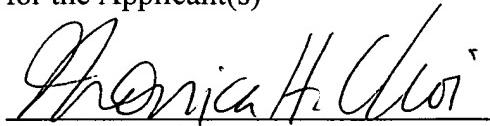
If the Examiner disagrees, the Examiner is respectfully requested to send an Advisory Action as soon as possible such that an Appeal may be timely filed before the 3-month dead-line of February 28, 2008.

Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,
for the Applicant(s)

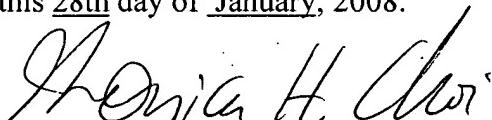
Dated: January 28, 2008

By:


Monica H. Choi
Reg. No. 41,671
Law Office of Monica H. Choi
P.O. Box 3424
Dublin, OH 43016-0204
(614) 789-0240
(614) 789-0241 (Fax)

CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing AMENDMENT AND RESPONSE AFTER FINAL UNDER 37 C.F.R. §1.116 is being deposited in the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28th day of January, 2008.


Monica H. Choi
Reg. No. 41,671